

REMARKS

I. STATUS OF THE CLAIMS

Claims 50-54, 69, and 81-94 were under examination at the time of the Action. Claim 82 has been canceled. Claims 50 and 69 have been amended. Support for the amended claims can be found in the claims as originally filed and in the specification on page 14, lines 4-17 and in FIG. 1. Thus, claims 50-54, 69, 81, and 83-94 are currently under examination.

II. REJECTIONS UNDER 35 U.S.C. §103

A. Raspe in view of Hyldig-Nielsen

Claims 50-54, 69, and 81-94 are rejected under 35 U.S.C. § 103(a) over Raspe in view of Hyldig-Nielsen. Applicants respectfully traverse.

It is the Examiner's burden to establish *prima facie* obviousness. *See In re Rijckart*, 9 F.3d 1531, 1532 [28 USPQ2d 1955] (Fed. Cir. 1993). Obviousness requires a suggestion of all the elements in a claim (*CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342 [68 USPQ2d 1940] (Fed. Cir. 2003)) and "a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 [82 USPQ2d 1385] (2007).

Applicants note that the combination of Raspe in view of Hyldig-Nielsen fail to teach "passing a fluid sample across a membrane that rests on a membrane support configured to maintain the membrane in a substantially planar orientation." As described on page 14 of the specification and illustrated in FIG. 1, the membrane (110) is supported by a membrane support (130) that keeps the membrane in a planar orientation, which keeps analytes to be detected in a single focal plane. FIG. 2 of Raspe illustrates a membrane suspended over a chamber and does not include a membrane support on which the membrane rests. Based on this illustration, the

membrane would flex and require multiple focal planes to assess the extend of microbes captured by the filter regions (13) of the membrane depicted in FIG. 2. Thus, the combination of the cited references fails to described all elements of the claimed invention and therefore cannot render the claimed invention obvious. Applicants request the withdrawal of the rejection.

III. DOUBLE PATENTING

Claims 50-54, 69, and 81-94 are also provisionally rejected under the doctrine of obviousness-type double patenting as being obvious over U.S. Pat. App. 11/022,365. Applicants respectfully ask that the request for a terminal disclaimer be held in abeyance until the present application has been allowed.

IV. CONCLUSION

The present claims are in a condition for allowance and such favorable action is requested. The Examiner is invited to contact the undersigned agent at (512) 536-3167 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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Date: October 20, 2008